

Petitioner's application is granted. Fee awards may be made under both the SSA and the EAJA, provided that the claimant's attorney refunds to the claimant the amount of the smaller fee, and provided further that the contingent-fee agreement between the claimant and counsel complies

with the statutory requirement that the fee be reasonable and that it not exceed 25 percent of the past-due benefits. 42 U.S.C. § 406(b); see Gisbrecht v. Barnhart, 535 U.S. 789, 808-09 (2002). According to the calculations of the Social Security Administration in this case, \$10,546.75 equals 25 percent of plaintiff's past-due benefits, and thus does not exceed the statutory ceiling. Moreover, as evidenced by plaintiff's consent to petitioner's application, the amount is reasonable: the record contains no suggestion of any fraud or overreaching, nor is the amount so large as to constitute a windfall to petitioner. See Wells v. Sullivan, 907 F.2d 367, 372 (2d Cir. 1990).

Accordingly, the Court approves an attorney fee of \$10,546.75 under the SSA. Defendant is directed to release to plaintiff \$3,738, as a refund for the EAJA fee; and to release to petitioner \$6,808.75 as an attorney fee under the SSA.

SO ORDERED.

DATED: Brooklyn, New York  
September 7, 2006

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DORA L. IRIZARRY  
United States District Judge